

**STATE BOARD OF ELECTIONS
STATE OF ILLINOIS**

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100 West Randolph, Suite 14-100
Chicago Illinois 60601
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- AMENDED -

AGENDA

State Board of Elections
State Officers Electoral Board
Monday, July 21, 2008
1020 South Spring Street
Springfield, Illinois
10:30 a.m.

1. Call State Officers Electoral Board to order.
2. Consideration of objections to petitions from the independent and new party candidate filing period;
 - a. *Denzler v. Carter*, 08SOEBGE102; (pgs.1-3)
 - b. *Boltz v. Ferguson*, 08SOEBGE507; (pgs.4-6)
 - c. *LeBeau v. Stevo*, 08SOEBGE508; (pgs.7-9)
 - d. *Haase v. Druck*, 08SOEBGE509. (pgs.10-12)
3. Consideration of Motion to Reconsider regarding the objections to resolutions to fill vacancies in nomination for the General Election;
 - a. *Gronewold v. Shrier*, 08SOEBGE100;
 - b. *Gooch v. Garling*, 08SOEBGE503;
 - c. *Karmel v. Shabo*, 08SOEBGE504;
4. Other business.
5. Recess State Officers Electoral Board until a date certain or until the call of the Chairman, whichever occurs first.

08 SOEB GE 102

Candidate: Bradley K. Carter

Office: Representative in Congress, 18th District

Party: Constitution

Objector: Jeffrey S. Denzler

Attorney For Objector: Objector appeared pro se.

Attorney For Candidate: Candidate appeared pro se.

Basis of Objection: Insufficient number of signatures. No more than 116 signatures were submitted. The signature requirement for new political party candidates is no fewer than 11,422.

Is the Objection Verified: Yes

Hearing Officer: Ken Menzel

Hearing Officer Findings and Recommendation: The objection should be sustained on the basis of nominating petition containing insufficient signatures. The candidate's remaining issues regarding the legitimacy of the objection and the proper calculation of signature requirements are also dismissed.

The candidate raises an issue regarding the constitutionality of the Election Code's signature requirements for new party candidates. The issue is not addressed due to the Board's lack of authority.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in his Report.

STATE OF ILLINOIS

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COUNTY OF COOK

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STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED STATE
OFFICERS ELECTORAL BOARD
STATE OF ILLINOIS

IN THE MATTER OF:
JEFFREY S. DENZLER

Objector,

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vs.

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08 SOEB GE 102

BRADLEY K. CARTER

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Candidate.

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HEARING OFFICER'S REPORT AND RECOMMENDATION

The matter having come before the State Board of Elections (the "SBE") as the duly qualified Electoral Board and before the undersigned Hearing Officer pursuant to Appointment and Notice issued previously, the Hearing Officer makes the following Report and Recommendation:

On June 23, 2008, a certain set of nomination papers (the "Petition") was filed by Bradley K. Carter (the "Candidate") to form a new political party, the Constitution Party of Illinois, and nominate the Candidate as its candidate in the 18th Congressional District of the State of Illinois. The Petition consisted of a Statement of Candidacy, Certificate of Officers Authorized to Fill Vacancies, Loyalty Oath and various signature sheets numbered up to and including page number 15 containing, in total, 116 signatures.¹ The 2008 Candidate's Guide lists the minimum signature requirement for new parties in the 18th Congressional District as 11,422.²

An Objector's Petition (the "Objection") was timely filed on June 30, 2008, by Jeffrey S. Denzler (the "Objector"). The Objection alleged that the Petition contained an insufficient number of signatures to qualify the Candidate for the ballot. No other issue or point of objection was raised by the Objection.

A schedule for the submission of Memoranda of Law (and an Objector's Response limited to any new matter(s) raised by the Candidate's Memorandum of Law) was set at the case management conference, with the matter to be decided upon these written submissions by the parties without a "live" hearing.

¹ The SBE staff produced a sheet by sheet count of the gross number of signatures contained on the Petition, with a cumulative total of 116. This count was provided to both of the parties at the case management conference. The Objector indicated his concurrence with the staff count and the Candidate declined to either accept or disagree with the staff count. The Hearing Officer made an independent signature count and concurs with the staff count (although the Hearing Officer notes that the count does not include a heavily lined out signature at page 15, line 4).

² This figure represents 5% of the ballots cast in the district at the 2006 General Election, as compiled in connection with the Official Canvass of said election.

The Objector elected to stand on the Objection and waived filing a Memorandum, and both parties submitted other materials in a timely fashion.

THE PARTIES' ARGUMENTS AND ANALYSIS

The Objector asserts that the Candidate not more than 118 signatures, leaving him at least 11,304 signatures short of the minimum number needed pursuant to Section 10-2 of the Illinois Election Code (10 ILCS 5/10-2) to qualify for placement on the ballot, and thus should not be placed on the ballot.³

The Candidate raises 5 essential points, as follows:

1. The Objection, at paragraph 1, which sets forth the allegation as to the minimum signature requirement refers to "independent candidates" rather than new party candidates.

As the Objector notes, the Objection contains numerous references to the Candidate and/or the Constitution Party of Illinois and their "new party" status, and a single reference to an "independent candidate". The "independent candidate" reference at Paragraph 1 occurs in a statement regarding the minimum signature requirement, which is the same for both new parties and independent candidates, and did in fact set forth the correct minimum. The Hearing Officer finds that Objection as a whole very clearly states the substance of the Objection and the single misnomer of the Candidate's status in paragraph 1 would not cause any confusion to, burden on, or detriment to the Candidate in defending against the Objection.

2. The proper election to base the minimum signature requirement is the 2008 General Primary.

Section 10-2 of the Illinois Election Code provides, in pertinent part:

"If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area." (Emphasis supplied)

The last regular election at which an officer was elected to serve the 18th Congressional District was the 2006 General Election, which was the election used to calculate the 11,422 minimum signature requirement. The Hearing Officer finds that this was the correct election to use under Section 10-2 for purposes of calculating the signature requirement herein. Further, even if even if the 2008 General Primary were used to calculate the minimum signature requirement, as the Candidate suggests, his 116 signatures would still be thousands below the minimum number needed.⁴

³ Based upon the signature count, the actual signature shortage would be 11,306.

⁴ At the 2008 General Primary, the Republican candidates alone garnered 78,133 votes (there were no Democratic Party or Green Party candidates in their respective primaries), which would yield a 5% threshold of no less than 3,907 if the Candidate's interpretation were to be accepted.

3. The Objector "did not make the objection of his own accord" and was "compelled" by others to make the Objection (as shown by the Objection's use of the same wording as prior objections and the fact that another person ordered the copies of several candidates' petitions but did not bring the objections himself).

The Candidate did not raise any issue as to the statutory qualifications of the Objector to bring the Objection. The Hearing Officer finds that none of the matters raised by the Candidate, even if assumed to be true, affect the validity or propriety of the Objection.

4. The hearing process before the SBE and Hearing Officer was biased against the Candidate.

The Candidate's assertions appear to rest on a misperception of the function of the case management conference under Rule 5 of the Rules of Procedure. The case management conference made clear that the sole issue in each of the four currently pending matters assigned to the Hearing Officer was whether the respective candidates had submitted a gross total number of signatures that exceeded the required minimum. A copy of the schedule set by the Hearing Officer and instructions given to the parties at the case management conference is attached as an appendix.

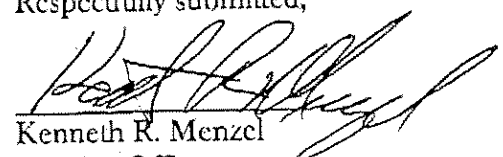
5. Illinois' statutory ballot access scheme unconstitutionally burdens new party's rights to ballot access.

The Illinois Supreme Court stated in Cinkus v. Village of Stickney Municipal Officers Electoral Board (2008) 228 Ill.2d 200, 886 N.E.2d 1011, 319 Ill.Dec. 887, "[t]o be sure, an administrative agency lacks the authority to declare a statute unconstitutional, or even to question its validity." 886 N.E.2d at 1020, 319 Ill.Dec. at 886. An electoral board does not have the authority to declare the statutory ballot access scheme unconstitutional (see also Delgado v. Board of Election Commissioners of City of Chicago (2007) 224 Ill.2d 481, 865 N.E.2d 183, 309 Ill.Dec. 820, Wiseman v. Elward (1st Dist. 1972) 228 Ill.App.3d 249, 283 N.E.2d 282).

CONCLUSION AND RECOMMENDATION

Based upon the foregoing, the Hearing Officer finds that the Candidate's Petition contained fewer than the minimum number of signatures required under Section 10-2 of the Illinois Election Code to qualify him for access to the ballot as a new party candidate for the 18th District Congressional District of the State of Illinois. Therefore, the Hearing Officer recommends that Objection to the Candidate's Petition should be sustained and that the name of the Candidate, Bradley K. Carter, not be printed on the ballot as the candidate of the Constitution Party of Illinois for said office at the 2008 General Election.

Respectfully submitted,


Kenneth R. Menzel
Hearing Officer

Dated: July 17, 2008

From: Menzel, Ken

Sent: Tuesday, July 08, 2008 4:23 PM

To: 'brad@carter4freedom.com'; 'jeff@decomfg.com'; 'feedback@willcountyip.org'; 'ilobby30n@aol.com';
'allan@stevoforcongress.com'; 'jjurgens@ancelglink.com'; 'spiegel@lawyers.com'

Cc: Sandvoss, Steve

Subject: Objections in 08 SOEB GE 102, 507, 508 & 509

08 SOEB GE 102 Denzler v. Carter (18th Congressional District - jeff@decomfg.com & brad@carter4freedom.com)
both pro se

08 SOEB GE 507 Boltz v. Ferguson (13th Congressional District - ilobby30n@aol.com & feedback@willcountyip.org)
Andrew Raucci / no appearance on file

08 SOEB GE 508 LeBeau v. Stevo (10th Congressional District - ilobby30n@aol.com & allan@stevoforcongress.com)
Andrew Raucci / pro se

08 SOEB GE 509 Haase v. Druck (14th Congressional District - jjurgens@ancelglink.com & spiegel@lawyers.com)
Jeffrey Jurgens / Andrew Spiegel

Gentlemen

As per our discussion during the Case Management Conference this morning, the following schedule is set for each of the four matters referenced above:

Thursday, July 10, 2008 – Objector to file his written Memorandum of Law (if any) in support of his Objector's Petition.

Monday, July 14, 2008 – Candidate to file his written Memorandum of Law (if any) opposing the Objector's Petition.

Thursday, July 17, 2008 - Objector to file his written Response (if any) to any new matters raised in the Candidate's Memorandum of Law.

At the time of filing his respective Memorandum of Law (or by the filing deadline if no Memorandum is to be filed), each party should advise me as to whether: (a) he accepts the staff signature count; or (b) has any disagreement with said count and state with specificity any such disagreement (noting the page number(s) and asserted number of signatures that should be credited for each such page). A paper copy of the staff signature count was provided at the Case Management Conference. An Excel formatted file of the staff count for each case is attached hereto. Please note that all four matters are included in the one file (each matter having its own tabbed worksheet page) and that the page numbering column reflects the order of numbered pages in the original petition as filed (any sequence errors in the original petition are reflected in the page number column and any missing page numbers are designated as such).

Items are deemed timely filed if I receive them by 5:00 PM on the day of the deadline by: (a) hand delivery; (b) facsimile transmission; or (c) email. My address, facsimile number and email address are provided below. Copies of items filed

should be sent to SBE General Counsel Steve Sandvoss (faxed to 217.782.5959 or sent to 1020 S. Spring Street, P.O. Box 4187, Springfield, Illinois, 62708)

Should any Objector decide not to file a Response in any particular matter, I would appreciate being advised of that determination as early as possible, so I may proceed to finalize my Recommendation and Report and make it available for the affected parties all the quicker.

Each matter will be decided on the basis of the respective Candidate's Nomination Papers, Objector's Petitions, parties' Written Memoranda and Objector's Responses, without a further hearing before the Hearing Officer.

It is my intention to provide my recommendations no later than the morning of Friday, July 18, 2008, and allow the General Counsel to present to matter at the State Board meeting at 10:30 AM on Monday, July 21, 2008. That meeting is nominally scheduled for our Springfield office, but the parties may appear at our Chicago office and participate by means of our audio/video link.

If you have any further questions or comments, please do not hesitate to contact me (remembering to copy the opposing side in your particular matter).

Ken Menzel
Election Specialist
Illinois State Board of Elections
James R. Thompson Center
100 W. Randolph Street, Suite 14-100
Chicago, Illinois 60601

Fax: (312) 814-6485
kmenzel@elections.il.gov

Ph: (312) 814-6462 (please remember not to engage in ex parte telephone contact)

08 SOEB GE 507

Candidate: Eric Ferguson

Office: Representative in Congress, 13th District

Party: Libertarian

Objector: Gregory A. Boltz

Attorney For Objector: Andrew Raucci

Attorney For Candidate:

Basis of Objection: Insufficient number of signatures. No more than 2 signatures were submitted. The signature requirement for new political party candidates is no fewer than 10,480.

Is the Objection Verified: Yes

Hearing Officer: Ken Menzel

Hearing Officer Findings and Recommendation: The objection should be sustained on the basis of nominating petition containing insufficient signatures.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in his Report.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED STATE
OFFICERS ELECTORAL BOARD
STATE OF ILLINOIS

IN THE MATTER OF:
GREGORY A. BOLTZ

Objector,

vs.

ERIC FERGUSON

Candidate.

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) 08 SOEB GE 507
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HEARING OFFICER'S REPORT AND RECOMMENDATION

The matter having come before the State Board of Elections (the "SBE") as the duly qualified Electoral Board and before the undersigned Hearing Officer pursuant to Appointment and Notice issued previously, the Hearing Officer makes the following Report and Recommendation:

On June 23, 2008, a certain set of nomination papers (the "Petition") was filed by Eric Ferguson (the "Candidate") to form a new political party, the Libertarian Party, and nominate the Candidate as its candidate in the 13th Congressional District of the State of Illinois. The Petition consisted of a Statement of Candidacy, Loyalty Oath and a single signature sheet containing 2 signatures. The 2008 Candidate's Guide lists the minimum signature requirement for new parties in the 13th Congressional District as 10,480.¹

An Objector's Petition (the "Objection") was timely filed on June 30, 2008, by Gregory A. Boltz (the "Objector"). The Objection alleged that the Petition contained an insufficient number of signatures to qualify the Candidate for the ballot. No other issue or point of objection was raised by the Objection.

The Candidate was served by certified mail on July, 8, 2008 at 12:53 PM. The Candidate did not appear, in person or by counsel, or otherwise participate in the hearing process.

A schedule for the submission of Memoranda of Law (and an Objector's Response limited to any new matter(s) raised by the Candidate's Memorandum of Law, should the Candidate appear and

¹ This figure represents 5% of the ballots cast in the district at the 2006 General Election, as set forth in the Official Canvass of said election.

participate) was set at the case management conference, with the matter to be decided upon these written submissions by the parties without a “live” hearing. The Objector elected to stand upon the Objection, and did not submit a separate Memorandum of Law.

THE PARTIES’ ARGUMENTS AND ANALYSIS

The Objector asserts that the Candidate was some 10,478 signatures short of the minimum number needed pursuant to Section 10-2 of the Illinois Election Code (10 ILCS 5/10-2) to qualify for placement on the ballot, and thus should not be placed on the ballot. Based upon a minimum signature requirement of 10,480 for new parties in the 13th Congressional District, and the Candidate’s filing of 2 signatures on his Petition, the objection would appear to be well grounded in fact.

The Candidate, though having been served, did not appear or otherwise participate in the hearing process.

CONCLUSION AND RECOMMENDATION

Based upon the foregoing, the Hearing Officer finds that the Candidate’s Petition contained fewer than the minimum number of signatures required under Section 10-2 of the Illinois Election Code to qualify him for access to the ballot as a new party candidate for the 13th District Congressional District of the State of Illinois. Therefore, the Hearing Officer recommends that Objection to the Candidate’s Petition should be sustained and that the name of the Candidate, Eric Ferguson, not be printed on the ballot as the candidate of the Libertarian Party for said office at the 2008 General Election.

Respectfully submitted,

Kenneth R. Menzel
Hearing Officer

Dated: July 17, 2008

08 SOEB GE 508

Candidate: Allan Stevo

Office: Representative in Congress, 10th District

Party: Independent

Objector: Patrick LeBeau

Attorney For Objector: Andrew Raucci

Attorney For Candidate: Candidate appeared pro se.

Basis of Objection: Insufficient number of signatures. No more than 6,978 signatures were submitted. The signature requirement for independent candidates is no fewer than 10,285.

Is the Objection Verified: Yes

Hearing Officer: Ken Menzel

Hearing Officer Findings and Recommendation: The objection should be sustained on the basis of nominating petition containing insufficient signatures.

The candidate raises an issue regarding the constitutionality of the Election Code's signature requirements for independent candidates. The issue is not addressed due to the Board's lack of authority.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in his Report.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED STATE
OFFICERS ELECTORAL BOARD
STATE OF ILLINOIS

IN THE MATTER OF:
PATRICK LeBEAU

Objector,

vs.

ALLAN STEVO

Candidate.

HEARING OFFICER'S REPORT AND RECOMMENDATION

The matter having come before the State Board of Elections (the “SBE”) as the duly qualified Electoral Board and before the undersigned Hearing Officer pursuant to Appointment and Notice issued previously, the Hearing Officer makes the following Report and Recommendation:

On June 23, 2008, a certain set of nomination papers (the “Petition”) was filed by Alan Stevo (the “Candidate”) as an independent candidate in the 10th Congressional District of the State of Illinois. The Petition consisted of a Statement of Candidacy and various signature sheets numbered up to and including page number 550 (although there were some minor pagination errors) containing, in total, 6,978 signatures.¹ The 2008 Candidate’s Guide lists the minimum signature requirement for independent candidates in the 10th Congressional District as 10,285.²

A Verified Objector's Petition (the "Objection") was timely filed on June 30, 2008, by Patrick LeBeau (the "Objector"). The Objection alleged that the Petition contained an insufficient number of signatures to qualify the Candidate for the ballot. No other issue or point of objection was raised by the Objection.

1 The SBE staff produced a sheet by sheet count of the gross number of signatures contained on the Petition, with a cumulative total of 6,978.

2 This figure represents 5% of the ballots cast in the district at the 2006 General Election, as compiled in connection with the Official Canvass of said election.

A schedule for the submission of Memoranda of Law (and an Objector's Response limited to any new matter(s) raised by the Candidate's Memorandum of Law) was set at the case management conference, with the matter to be decided upon these written submissions by the parties without a "live" hearing. In conjunction with the filing of their respective Memoranda, the parties were to advise the Hearing Officer of any dispute they might have with the SBE staff signature count. The Objector elected to stand upon the verified Objection in lieu of a Memorandum of Law. The parties submitted the remainder of their materials in a timely fashion. Neither party indicated any dispute with regard to the SBE staff signature count.

THE PARTIES' ARGUMENTS AND ANALYSIS

The Objector asserts that the Candidate submitted no more than 7,000 signatures leaving him at least 3285 signatures short of the minimum number needed pursuant to Section 10-2 of the Illinois Election Code (10 ILCS 5/10-2) to qualify for placement on the ballot, and thus should not be placed on the ballot.³

The Candidate asserts essentially 2 areas of unconstitutionality with regard to Illinois' statutory ballot access scheme for independent candidates, claiming that it is unreasonable and arbitrary to: (a) require a set a 5,000 signature minimum for independent Congressional candidates for the election following the decennial redistricting, while requiring a potentially higher number based upon actual election turnout for other years and (b) require independent candidates to file substantially more signatures than established party candidates (alleging a burden 7 times greater than a Democratic Party candidate and 10 times greater than a Republican Party candidate).

The Candidate, appearing pro se, cited no case law in support of his constitutional claims.

The Objector argues that the 5% requirement for independent candidates has been upheld by the courts, citing *Jenness v. Fortson* (1971) 403 U.S. 431 and *Jackson v. Ogilvie* (N.D. Ill. 1971) 325 F.Supp. 864, affirmed, 403 U.S. 925 (1971).

The Illinois Supreme Court stated in *Cinkus v. Village of Stickney Municipal Officers Electoral Board* (2008) 228 Ill.2d 200, 886 N.E.2d 1011, 319 Ill.Dec. 887, "[t]o be sure, an administrative agency lacks the authority to declare a statute unconstitutional, or even to question its validity." 886 N.E.2d at 1020, 319 Ill.Dec. at 886. An electoral board does not have the authority to declare the statutory ballot access scheme unconstitutional (see also *Delgado v. Board of Election Commissioners of City of Chicago* (2007) 224 Ill.2d 481, 865 N.E.2d 183, 309 Ill.Dec. 820, *Wiseman v. Elward* (1st Dist. 1972) 228 Ill.App.3d 249, 283 N.E.2d 282).

CONCLUSION AND RECOMMENDATION

Based upon the foregoing, the Hearing Officer finds that the Candidate's Petition contained fewer than

³ Based upon the SBE staff count, the candidate would be 3,307 short of the statutory minimum.

the minimum number of signatures required under Section 10-3 of the Illinois Election Code to qualify him for access to the ballot as an independent candidate for the 10th District Congressional District of the State of Illinois. Therefore, the Hearing Officer recommends that Objection to the Candidate's Petition should be sustained and that the name of the Candidate, Alan Stevo, not be printed on the ballot as an independent candidate for said office at the 2008 General Election.

Respectfully submitted,

Kenneth R. Menzel
Hearing Officer

Dated: July 17, 2008

08 SOEB GE 509

Candidate: Dan Druck

Office: Representative in Congress, 14th District

Party: Libertarian

Objector: Brett Haase

Attorney For Objector: Jeffrey R. Jurgens

Attorney For Candidate: Andrew B. Spiegel

Basis of Objection: Insufficient number of signatures. No more than 7,131 signatures were submitted. The signature requirement for new political party candidates is no fewer than 9,995.

Is the Objection Verified: Yes

Hearing Officer: Ken Menzel

Hearing Officer Findings and Recommendation: The objection should be sustained on the basis of nominating petition containing insufficient signatures. The candidate's argument regarding the proper calculation of signatures is not addressed because he would still fall well short of the requirement if the signature requirement regardless of his reading of Section 10-2.

The candidate raises an issue regarding the constitutionality of the Election Code's signature requirements for new party candidates. The issue is not addressed due to the Board's lack of authority.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in his Report.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED STATE
OFFICERS ELECTORAL BOARD
STATE OF ILLINOIS

IN THE MATTER OF:
BRETT HAASE

Objector,

vs.

DAN DRUCK

Candidate.

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08 SOEB GE 509

HEARING OFFICER'S REPORT AND RECOMMENDATION

The matter having come before the State Board of Elections (the "SBE") as the duly qualified Electoral Board and before the undersigned Hearing Officer pursuant to Appointment and Notice issued previously, the Hearing Officer makes the following Report and Recommendation:

On June 23, 2008, a certain set of nomination papers (the "Petition") was filed by Dan Druck (the "Candidate") to form a new political party, the Libertarian Party, and nominate the Candidate as its candidate in the 14th Congressional District of the State of Illinois. The Petition consisted of a Statement of Candidacy and various signature sheets numbered up to and including page number 513 containing, in total, 7,131 signatures.¹ The 2008 Candidate's Guide lists the minimum signature requirement for new parties in the 14th Congressional District as 9,995.²

A Verified Objector's Petition (the "Objection") was timely filed on June 30, 2008, by Brett Haase (the "Objector"). The Objection alleged that the Petition contained an insufficient number of signatures to qualify the Candidate for the ballot. No other issue or point of objection was raised by the Objection.

A schedule for the submission of Memoranda of Law (and an Objector's Response limited to any new matter(s) raised by the Candidate's Memorandum of Law) was set at the case management conference, with the matter to be decided upon these written submissions by the parties without a "live" hearing. Both parties submitted their materials in a timely fashion.

¹ The SBE staff produced a sheet by sheet count of the gross number of signatures contained on the Petition, with a cumulative total of 7,131. This count was provided to both of the parties at the case management conference and each of the parties indicated their concurrence with the staff count at the time of filing their respective Memoranda of Law.

² This figure represents 5% of the ballots cast in the district at the 2006 General Election, as compiled in connection with the Official Canvass of said election.

THE PARTIES' ARGUMENTS AND ANALYSIS

The Objector asserts that the Candidate was some 2,864 signatures short of the minimum number needed pursuant to Section 10-2 of the Illinois Election Code (10 ILCS 5/10-2) to qualify for placement on the ballot, and thus should not be placed on the ballot. The Objector relies on Libertarian Party of Illinois v. Rednour (7th Cir. 1997) 108 F.3d 768, as support for the validity of the Illinois ballot access scheme for new parties.

The Candidate argues that that Illinois' statutory ballot access scheme for new parties is unconstitutional in several respects. By way of example, the candidate asserts that there is no rational basis for Section 10-2 to allow third party access in a Congressional District with 5,000 signatures in the first election following redistricting while requiring a higher number of signatures in other years (the Candidate asserts that the Illinois ballot access scheme for new parties is unconstitutional in a number of other ways). However, as the Illinois Supreme Court stated in Cinkus v. Village of Stickney Municipal Officers Electoral Board (2008) 228 Ill.2d 200, 886 N.E.2d 1011, 319 Ill.Dec. 887, "[t]o be sure, an administrative agency lacks the authority to declare a statute unconstitutional, or even to question its validity." 886 N.E.2d at 1020, 319 Ill.Dec. at 886. An electoral board does not have the authority to declare the statutory ballot access scheme unconstitutional (see also Delgado v. Board of Election Commissioners of City of Chicago (2007) 224 Ill.2d 481, 865 N.E.2d 183, 309 Ill.Dec. 820, Phelan v. County Officers Electoral Board (1st Dist. 1992) 240 Ill.App.3d 368, 608 N.E.2d 215, 181 Ill.Dec. 142, Wiseman v. Elward (1st Dist. 1972) 228 Ill.App.3d 249, 283 N.E.2d 282).

The Candidate also raised a non-Constitutional claim. The Candidate asserts that the method of calculating the minimum signature requirement used by the SBE improperly interprets the following language of Section 10-2:

"If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area." (Emphasis supplied)

The SBE method uses the number of ballots cast within the district at the preceding Congressional election. The Candidate asserts that this language should be read as requiring the calculation to be based upon the number of votes cast for Congressional candidates at the preceding Congressional election. However, if that interpretation were to be adopted, the Candidate would still be 2,727 signatures short of his minimum signature requirement.³

3 At the November 7, 2006 General Election, the 14th Congressional District election featured two candidates, J. Dennis Hastert (with 117,870 votes) and Jonathan "John" Laesch (with 79,274 votes) who collectively received 197,144 votes (see the Official Canvass of said election). Using that figure to calculate the 5% signature requirement would have required the Candidate to obtain a minimum of 9,858 signatures (a reduction of 137 signatures when compared to the SBE method). The Candidate's 7,131 signatures would have left him 2,727 signatures short even if this proposed alternative interpretation of Section 10-2 were adopted.

CONCLUSION AND RECOMMENDATION

Based upon the foregoing, the Hearing Officer finds that the Candidate's Petition contained fewer than the minimum number of signatures required under Section 10-2 of the Illinois Election Code to qualify him for access to the ballot as a new party candidate for the 14th District Congressional District of the State of Illinois. Therefore, the Hearing Officer recommends that Objection to the Candidate's Petition should be sustained and that the name of the Candidate, Dan Druck, not be printed on the ballot as the candidate of the Libertarian Party for said office at the 2008 General Election.

Respectfully submitted,

Kenneth R. Menzel
Hearing Officer

Dated: July 17, 2008

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF
NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES
FOR NOMINATION TO THE OFFICE OF REPRESENTATIVES IN THE
GENERAL ASSEMBLY, 106th DISTRICT**

DONALD GRONEWOLD,

Petitioner-Objector,

vs.

TOM SHRIER,

Respondent-Candidate.

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08 SOEB 100

MOTION FOR RECONSIDERATION

NOW COMES the Petitioner-Objector, Donald Gronewold, by his attorneys, The Foster & Buick Law Group, LLC and Burke, Warren, McKay & Serritella, P.C., and moves for reconsideration of the vote of this matter, which occurred on July 8, 2008 for the following reasons:

1. This matter was heard by the State Officers Electoral Board on July 8, 2008 with a vote which ended in a tie, four members to four members and no decision was made.
2. That in the interest of justice it would be appropriate for this matter to be reconsidered in an attempt to have a decision made for the benefit of all parties concerned.

WHEREFORE the Petitioner-Objector, Donald Gronewold, moves that the State Officers Electoral Board reconsiders its decision of July 8, 2008 and place this matter on the agenda for further consideration and further vote.

Respectfully Submitted,

Donald Gronewold, Petitioner-Objector,

By: 

John W. Countryman
Attorney for Petitioner-Objector

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08 SOEB GE 100

Candidate: Tom Shrier

Office: State Representative; 106th District

Party: Democratic

Objector: Donald Gronewold

Attorney For Objector: John W. Countryman and John G. Fogarty

Attorney For Candidate: Michael J. Kasper

Basis of Objection: The Resolution filed by the candidate was filed with the State Board of Elections more than 3 days following the meeting of the managing committee at which the candidate was chosen to fill the vacancy in nomination, contrary to the provisions of Section 5/7-61 of the Election Code.

Is the Objection Verified: Yes

Hearing Officer: Barb Goodman

Hearing Officer Findings and Recommendation: The candidate's Motion to Strike and Dismiss the Objector's Petition on the grounds that such Petition was not timely filed should be denied. The portion of the candidate's Motion addressing the timeliness of the filing of the nominating papers should be granted, such papers should be deemed valid and Tom Shrier should appear on the ballot for the 2008 General Election.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in her Report.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO
THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY

Donald Gronewald

Objector

-v-

Tom Shrier

Candidate

08-SOEB-GE100

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on April 21, 2008. Objectors appeared through their attorneys John Fogarty and John Countryman and candidate appeared through his attorney Michael Kasper. The parties were given an opportunity to submit preliminary motions. The candidate timely submitted a Motion to Dismiss and the Objector timely submitted a Response to Motion to Dismiss Objection.

The sole issue presented in the Objector's Petition was whether the Certificate of Organization was timely filed with the State Board of Elections. The facts are uncontroverted. The Resolution filling the vacancy was filed four calendar days after the committee acted. The Committee met on Friday, March 14, 2008 and the Resolution was filed the following Tuesday, March 18, 2008.

Section 7-61 requires that:

The resolution filling the vacancy shall be sent by U. S. mail or personal delivery to the certifying officer or board within 3 days of the action by which the vacancy was filled. 10 ILCS 5/7-61

According to the Objector, because the Resolution was not filed within three

days by which the vacancy was filled, it is invalid.

Although Candidate cites the statute on statutes to provide assistance in calculating the time in which the resolution had to be filed, Candidate correctly points out that Section 1-6 of the Election Code is controlling here. Section 1-6 provides:

Computing dates of various acts; Saturday, Sunday, and holidays.

(a) If the first or last day fixed by law to do any act required or allowed by this Code falls on a State holiday or a Saturday or a Sunday, the period shall extend through the first business day next following the day otherwise fixed as the first or last day, irrespective of whether any election authority or local election official conducts business on the State holiday, Saturday, or Sunday. 10 ILCS 5/1-6

In the instant case, because the committee acted on a Friday, the first day to file would have been Saturday. However, pursuant to Section 1-6, because the first day was a Saturday, it must be extended to Monday. Under this interpretation, the filing on Tuesday complied with the committee's statutory obligation to file within 3 days.

Candidate further argued that the objector failed to file the objector's petition within the time required by Section 10-8 of the Election Code and therefore the electoral board is without jurisdiction to hear the matter. The Candidate asserts that because the Representative Committee met and executed his nomination papers on March 14, 2008, the Committee would have had three days to file and the Objector's petition should have been filed within five business days after said date.

The Candidate's interpretation is without support in the law. Section 10-8 clearly states that objections must be filed 5 business days after the deadline for filling vacancies in nomination. Section 10-8 provides:

Certificates of nomination and nomination papers, and petitions to submit

public questions to a referendum, being filed as required by this Code, and being in apparent conformity with the provisions of this Act, shall be deemed to be valid unless objection thereto is duly made in writing **within 5 business days after the last day for filing** the certificate of nomination or nomination papers or petition for a public question, with the following exceptions. . . (emphasis added) 10 ILCS 5/10-8

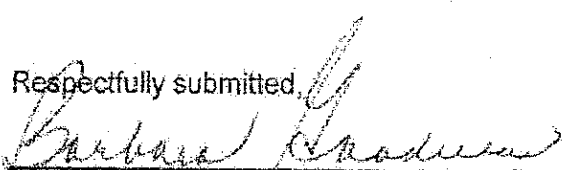
As the Objector correctly notes, the last day to fill a vacancy in nomination and the last day for the filing of the nomination papers was April 7, 2008. The objector's petition was filed on April 14, 2008, which is within the 5 business day objection period.

The candidate's assertion that the objection period applies to each committee and is tied to the last day each committee files its nomination papers is simply without support in the law and is contrary to the plain language of the statute. Indeed, to adopt such an interpretation would be to conclude that the objection filing period and electoral board hearings are fluid and on-going from after the primary through April 7, 2008. Such an interpretation is simply contrary to the plain language of the statute. Furthermore, such an interpretation would create a chaotic and untenable electoral scheme.

Inasmuch as the Objector's Petition was timely filed, the Motion to Strike and Dismiss was denied. Further, because the nominating papers were timely filed pursuant to Section 7-61 and therefore in accordance with Section 7-61 the Election Code, the Motion to Strike and Dismiss was granted as to this issue.

In light of the foregoing, it is my recommendation that the nominating papers be deemed valid and that the name of candidate Tom Shrier for the Democratic nomination to the office of Representative in the General Assembly in the 106th Representative District appear on the ballot at the November 4, 2008 General Election.

Respectfully submitted,


Barbara Goodman
Hearing Examiner
June 22, 2008

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF
NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES
FOR NOMINATION TO THE OFFICE OF REPRESENTATIVES IN THE
GENERAL ASSEMBLY, 52nd DISTRICT**

THOMAS W. GOOCH, III,)	
)	
Petitioner-Objector,)	
)	
vs.)	08 SOEB 503
)	
RICH GARLING,)	
)	
Respondent-Candidate.)	

MOTION FOR RECONSIDERATION

NOW COMES the Petitioner-Objector, Thomas W. Gooch, III, by his attorneys, The Foster & Buick Law Group, LLC and Burke, Warren, McKay & Serritella, P.C., and moves for reconsideration of the vote of this matter, which occurred on July 8, 2008 for the following reasons:

1. This matter was heard by the State Officers Electoral Board on July 8, 2008 with a vote which ended in a tie, four members to four members and no decision was made.
2. That in the interest of justice it would be appropriate for this matter to be reconsidered in an attempt to have a decision made for the benefit of all parties concerned.

WHEREFORE the Petitioner-Objector, Thomas W. Gooch, III, moves that the State Officers Electoral Board reconsiders its decision of July 8, 2008 and place this matter on the agenda for further consideration and further vote.

Respectfully Submitted,

Thomas W. Gooch, III, Petitioner-Objector,

By: 

John W. Countryman
Attorney for Petitioner-Objector

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Candidate: Rich Garling

Office: State Representative; 52nd District

Party: Democratic

Objector: Thomas W. Gooch III

Attorney For Objector: John W. Countryman and John G. Fogarty

Attorney For Candidate: Michael J. Kasper

Basis of Objection: A Resolution to fill the vacancy in nomination was filed by Mr. Garling on March 26. The meeting of the Representative Committee at which Mr. Garling was chosen occurred on February 23, in violation of Section 7-61 of the Election Code. Section 7-61 provides that a Resolution to fill a vacancy in nomination must be filed with the State Board of Elections not more than 3 days following the meeting of the managing committee at which the candidate was chosen to fill the vacancy in nomination. On April 6, the Representative Committee met again and selected Mr. Garling as the nominee to fill the vacancy in nomination. No vacancy existed on April 6, therefore any action to fill such "vacancy" is null and void. On April 7, nomination papers and a withdrawal of the March 26 Resolution were submitted to the State Board of Elections. As such, the vacancy was not properly filled since no vacancy existed on April 6.

Is the Objection Verified: Yes

Hearing Officer: Barb Goodman

Hearing Officer Findings and Recommendation: Both counts of the Objector's Petition should be sustained. The first count alleged that the original submission of the Resolution to Fill a Vacancy in Nomination was not timely filed and the second count alleged that the subsequent appointment of the same person to fill the vacancy in nomination occurred before there was a vacancy to be filled. The candidate Rich Garling's nominating papers should be deemed invalid, and his name should not be certified to appear on the ballot at the 2008 General Election.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in her Report.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO
THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY

THOMAS W. GOOCH

Objector

-v-

RICH GARLING

Candidate

08-SOEB-GE 503

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on April 21, 2008. Objectors appeared through their attorneys John Fogarty and John Countryman and candidate appeared through his attorney Michael Kasper. The parties were given an opportunity to submit preliminary motions. The candidate timely submitted a Motion to Dismiss and the Objector timely submitted a Response to Motion to Dismiss Objection.

The issue presented in the Objector's petition was whether a vacancy existed at the time the Resolution to Fill a Vacancy was filed.

The facts in this case are not at issue. The Representative Committee originally met on February 23, 2008 to nominate the candidate herein. The nominating papers for candidate Garling were filed on March 26, 2008. At some time on April 6, 2008, the candidate executed a Withdrawal of Candidacy. Thereafter on April 6, 2008, the Representative committee met again to nominate the same candidate. On April 7, 2008 at 3:02 p.m., the candidate filed a written withdrawal of candidacy with the State Board of Elections. At 3:09 p.m. on April 7, 2008, the Resolution to nominate Garling and his other nominating papers were also filed.

The Objector's Petition alleges that the first Resolution and nominating papers filed on behalf of the candidate were invalid as they did not meet the filing requirements set forth in Section 7-61 of the Election Code. Objector's contention is correct as to the first set of nominating papers in that Section 7-61 requires that the resolution and nominating papers be filed within three days of the date upon which the committee takes action. In this case, the resolution and nominating papers were filed more than one month from the date upon which the committee took action. Accordingly, the first set of nominating papers are invalid.

The Candidate contends in his Motion to Strike and Dismiss that the candidate effectively created a vacancy in nomination when he executed his Withdrawal of Candidacy on April 6, 2008 and tendered it to the committee. Said purported vacancy then created the opportunity for the Committee to once again fill the vacancy.

Candidate's position is simply not supported by case law. The Election Code provides the manner in which a candidate must withdraw his candidacy, thus creating a vacancy. Until the withdrawal is effective no such vacancy can exist. Section 7-12(9) provides:

Any person for whom a petition for nomination, or for committeeman or for delegate or alternate delegate to a national nominating convention has been filed may cause his name to be withdrawn by request in writing, signed by him and duly acknowledged before an officer qualified to take acknowledgments of deeds, and **filed in the principal or permanent branch office of the State Board of Elections** or with the appropriate election authority or local election official, not later than the date of certification of candidates for the consolidated primary or general primary ballot.

(emphasis added) 10 ILCS 5/7-12(9).

Thus, contrary to candidate's contention, a withdrawal of candidacy is not effective upon execution or tender to any other body except the State Board of Elections. Rather, it is effective upon filing with the State Board of Elections. In this

case, the Withdrawal was filed **after** the committee attempted to fill a vacancy that had not yet occurred. Despite the plain language regarding withdrawals of candidacy, Candidate contends that a vacancy occurs when the committee knows that the candidate intends to withdraw. However, nothing in the Election Code supports such a position.

In his Motion, Candidate cites the case of DuPage County Election Commission v State Board of Elections, 345 Ill. App. 3d 200, 800 N.E.2d 1278 (2nd Dist. 2004). Candidate relies on the DuPage case to establish that a candidate has a right to withdraw his candidacy at any time because a candidate cannot be forced to take office. Candidate is correct in his understanding of the DuPage case but nothing in the DuPage case serves to advance the candidate's case. There is no issue that the candidate had the absolute right to withdraw. No one has questioned that right. Rather, the date upon which the candidate withdrew, thus creating a vacancy, is the sole issue here.

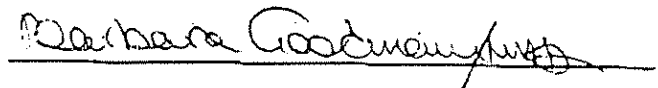
Additionally, Candidate relies on McCarthy v Streit, 182 Ill. App. 3d 1026, 538 N.E.2d 873 (1st Dist. 1989) to establish that the committee is empowered to nominate the same candidate to fill the vacancy in nomination. Again, candidate has addressed an issue not alleged in the objections. The power of the committee to nominate the same candidate twice is not the issue. Whether a vacancy existed for the committee to fill with whatever candidate of their choosing is the issue presented. Accordingly, as with the DuPage case, the McCarthy case does nothing to advance the candidate's position.

Therefore, it is the opinion of this hearing officer that when the nominating committee met on April 6, 2008 to fill a vacancy in nomination, no such vacancy yet

occurred. Accordingly, the committee was without authority to fill such vacancy and its attempt to do so was void, thus rendering the subsequent filing of the candidate's 2nd set of nominating papers invalid. The candidate's Motion to Strike and Dismiss is therefore denied and the objections are sustained in conformity herewith.

In light of the foregoing, it is my recommendation that the nominating papers of Rich Garling be deemed invalid and that the name of candidate Rich Garling for the Democratic nomination to the office of Representative in the General Assembly in the 52nd Representative District not appear on the ballot at the November 4, 2008 General Election.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Barbara Goodman", is written over a horizontal line.

Barbara Goodman

Hearing Examiner

June 22, 2008

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 80th
REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Jonathon Karmel,

Petitioner-Objector,

v.

Miriam Shabo,

Respondent-Candidate.

08-SOEB-GE 504

MOTION FOR FURTHER CONSIDERATION

NOW COMES Objector, by and through hIS attorneys, and moves for further consideration of this matter, and in support thereof, states as follows:

1. On July 8, 2008, the Electoral Board considered the Objector's Petition in this matter and four members of the Board voted to sustain the Objector's Petition and four members voted to overrule the Objector's Petition.
2. Section 10-10 of the Election Code provides that an electoral board's final decision be made by a "majority" of the members of the board. 10 ILCS 5/10-10.
3. Because neither the motion to sustain the Objector's Petition, nor the Motion to overrule the Petition received a majority vote of the Board, the matter has not yet been decided and is still pending before the Board.
4. As a result, the Objector asks this Board to give this matter further consideration in order to come to a final decision.

Wherefore, for the foregoing reasons, Objector respectfully prays that the Motion be granted.

Respectfully submitted,
Objector

By: 
One of his attorneys

Michael J. Kasper
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Chicago, IL 60601
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312.368.4944 (fax)

08 SOEB GE 504

Candidate: Miriam Shabo

Office: State Representative; 80th District

Party: Republican

Objector: Jonathan Karmel

Attorney For Objector: Michael J. Kasper

Attorney For Candidate: John W. Countryman and John G. Fogarty Jr.

Basis of Objection: The Representative Committee (the Committee) failed to file a Certificate of Organization or similar documentation indicating that it was organized as required by the Election Code. The failure to file such Certificate deprives the election authority and the public of the necessary evidence that the action taken by the Committee was authorized and lawful. The Certificate of Organization if filed, would have provided the identity and addresses of the Committee officers so that one could verify that the vacancy was filled by authorized officials.

Is the Objection Verified: Yes

Hearing Officer: Barb Goodman

Hearing Officer Findings and Recommendation: The Candidate's Motion to Strike the Objector's Petition on the grounds that the SOEB lacked subject matter jurisdiction to rule on the issue of the Representative Committee's failure to file the Certificate of Organization should be denied. The Objection based on such failure to file should be sustained, the nominating papers should be deemed invalid and Miriam Shabo should not appear on the ballot at the 2008 General Election.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in her Report.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO
THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY

JONATHON KARMEL

Objector

-v-

MIRIAM SHABO

Candidate

08-SOEB-GE 504

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on April 21, 2008. Objectors appeared through their attorney Michael Kasper and candidate appeared through his attorneys John Fogarty and John Countryman. The parties were given an opportunity to submit preliminary motions. The candidate timely submitted a Motion to Dismiss and the Objector timely submitted a Response to Motion to Dismiss Objection. A hearing was held on the Motion which was dispositive of the issues presented. After the close of the hearing, the

The objector's petition raised one issue. Specifically, the issue presented was whether the failure of the representative Committee to file a Certificate of Organization rendered the resolution to nominate the candidate and the nominating papers invalid.

The facts of the case are not in dispute. On April 7, 2008, a Resolution to Fill a Vacancy in Nomination Occurring after Primary Election was filed with the State Board of Elections. Prior and subsequent thereto, no Statement of Organization was filed with the State Board of Elections.

Candidate moved to strike the objections, alleging that the Electoral Board lacked subject matter jurisdiction to consider an objection for failure to file a certificate of organization. According to Candidate, the Electoral Board's only powers are those set forth in Section 10-10 of the Election Code. In Candidate's view because there was no mandate to review Certificates of Organization, the electoral board lacked the ability to consider them.

Indeed, Section 10-10 sets forth, in pertinent part, the obligation and the scope of authority of an electoral board:

The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and **whether or not they were filed within the time and under the conditions required by law**, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10 -10.1. The electoral board must state its findings in writing and must state in writing which objections, if any, it has sustained.

10 ILCS 5/10-10

As the Objector correctly pointed out in his Response to the motion, the Objector's Petition requested that the electoral board determine whether the certificate of nomination was in fact filed under the conditions required by law. Such inquiry is wholly within the scope of the electoral board's authority and candidate's argument that the electoral board lacked subject matter jurisdiction is without merit.

Therefore, the sole issue to resolve was whether the failure to file a certificate of organization is fatal to the subsequent filing of a resolution to nominate a candidate.

The obligation to file a certificate of organization is set forth in Section 8-5 of the Election Code:

Within 180 days after the primary of each other even-numbered year, each legislative committee and representative committee shall meet and proceed to organize by electing from its own number a chairman, and either from its own number or otherwise such other officers as each committee may deemed necessary or expedient. **Immediately upon completion of organization, the chairman shall forward to the State Board of Elections the names and addresses of the chairman and secretary.** The outgoing chairman of such committee shall notify the members of the time and place (which shall be in the limits of such district) of such meeting. (Emphasis added)

To determine the effect of the failure to file a certificate of organization, a full reading of Article 8 is instructive in determining whether Section 8-5 is mandatory or directory. Of particular importance is Section 8-1 which provides:

The name of no person nominated by a party required hereunder to make nominations of candidates for members of the general Assembly shall be placed upon the official ballot to be voted at a general election as a candidate unless such person shall have been nominated for such office under the provisions of this Article.

In interpreting Section 8-1 and its relevance to Section 8-5, the court in Carnell v Madison County Officers Election Board, et. al. 299 Ill. App. 3d 419, 701 N.E.2d 548 (5th Appl Dist. 1998) held:

The Election Code must be read in its entirety and one provision cannot be read in a manner that renders another section meaningless or superfluous.

Thus, as the Carnell court instructs, Section 8-1 and Section 8-5 must be read together to give meaning to both. To require the immediate filing of a Certificate of Organization without consequence for its failure is to ignore the plain meaning of Section 8-1. Conversely, to provide a consequence in Section 8-1 without applying it to Section 8-5 is to wholly ignore Section 8-5. As indicated in Carnell, where

Section 8-5 is violated, Section 8-1 dictates that the nominating papers be rendered invalid.

After the close of the hearing, each party filed motions to cite supplemental authority. Candidate cited Champaign County Electoral Board decisions, copies of which are attached hereto for the proposition that strict compliance with 8-5 is not required. To the extent that these electoral board cases indicate that the filing of a Statement of Organization is not a mandatory prerequisite to the filing of a valid resolution to nominate a candidate, it is the opinion of this hearing examiner that such decision is contrary to law and not controlling here.

Objector filed cited a Recommended Order in the case of Gonzales v Delich issued by Gerald Mullin, hearing officer for the Chicago Board of Elections. Objector further offered the cases of Lyons v Anderson 08 RGA 02 and Flanagan v Shelstrom 08 COEB 55 01 issued by the Cook County Officers Electoral Board. These cases establish that the filing of a Certificate of Organization is a condition precedent to a valid resolution to nominate a candidate.

Accordingly, the motion to dismiss the objections was denied and the objection as to the failure to file a Certificate of Organization was granted.

In light of the foregoing, it is my recommendation that the nominating papers be deemed invalid and that the name of candidate Marion Shabo for the Republican nomination to the office of Representative in the General Assembly in the 80th Representative District not appear on the ballot at the November 4, 2008 General Election.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Barbara Goodman", written over a horizontal line.

Barbara Goodman
Hearing Examiner

June 22, 2008